

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

J.R. ABBOTT CONSTRUCTION INC., a  
Washington corporation,

Plaintiff,

vs.

ZURICH AMERICAN INSURANCE  
COMPANY, an Illinois corporation;  
AMERICAN GUARANTEE AND  
LIABILITY INSURANCE COMPANY, an  
Illinois corporation; TRAVELERS  
INDEMNITY COMPANY d/b/a  
CHARTER OAK FIRE INSURANCE  
COMPANY, a Connecticut corporation;  
ILLINOIS UNION INSURANCE  
COMPANY, an Illinois corporation; and  
INTERSTATE FIRE AND CASUALTY  
COMPANY, an Illinois corporation,

Defendants.

NO. 2:12-cv-01502 RSM

DEFENDANT INTERSTATE FIRE &  
CASUALTY COMPANY'S ANSWER  
TO PLAINTIFF'S COMPLAINT

COMES NOW defendant Interstate Fire & Casualty Company ("Interstate" or  
"Defendant"), by and through its undersigned counsel, and answers the complaint of J. R.  
Abbott Construction, Inc. as follows.

DEFENDANT INTERSTATE FIRE &  
CASUALTY COMPANY'S ANSWER  
TO PLAINTIFF'S COMPLAINT  
(2:12-cv-01502 RSM) – 1

CARNEY  
BADLEY  
SPELLMAN

701 Fifth Avenue, Suite 3600  
Seattle, Washington  
98104-7010  
T (206) 622-8020  
F (206) 467-8215

I. PARTIES, JURISDICTION AND VENUE

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2 1. Answering paragraph 1 of the complaint, Defendant is without information  
3 sufficient to form a belief as to the truth of the allegations contained therein and therefore denies  
4 the same.

5 2. Answering paragraph 2 of the complaint, Defendant makes no answer thereto,  
6 said allegation pertaining to another defendant.

7 3. Answering paragraph 3 of the complaint, Defendant makes no answer thereto,  
8 said allegation pertaining to another defendant.

9 4. Answering paragraph 4 of the complaint, Defendant makes no answer thereto,  
10 said allegation pertaining to another defendant.

11 5. Answering paragraph 5 of the complaint, Defendant makes no answer thereto,  
12 said allegation pertaining to another defendant.

13 6. Answering paragraph 6 of the complaint, Defendant admits the same.

14 7. Answering paragraph 7 of the complaint, Defendant admits the same.

15 8. Answering paragraph 8 of the complaint, Defendant admits the same.

16 9. Answering paragraph 9 of the complaint, Defendant denies each and every  
17 allegation contained therein.

18 10. Answering paragraph 10 of the complaint, Defendant makes no answer thereto,  
19 said allegation pertaining to another defendant.

20 11. Answering paragraph 11 of the complaint, Defendant makes no answer thereto  
21 said allegation pertaining to another defendant.

22 12. Answering paragraph 12 of the complaint, Defendant makes no answer thereto  
23 said allegation pertaining to another defendant.

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13. Answering paragraph 13 of the complaint, Defendant denies the same.

14. Answering paragraph 14 of the complaint, Defendant makes no answer thereto said allegation pertaining to another defendant.

## II. FACTS

15. Answering paragraph 15 of the complaint, Defendant admits the same.

16. Answering paragraph 16 of the complaint, Defendant admits Abbott has tendered defense and indemnity to it, but is without information sufficient to form a belief as to the truth of the remainder of the allegations contained therein and therefore denies the same.

17. Answering paragraph 17 of the complaint, Defendant denies the allegations contained therein to the extent they apply to this answering defendant. Except as denied, Defendant makes no answer thereto, said allegations pertaining to other defendants.

18. Answering paragraph 18 of the complaint, Defendant denies the allegations contained therein to the extent the allegations are directed at Defendant. Except as denied, Defendant makes no answer thereto, said allegations pertaining to other defendants.

19. Answering paragraph 19 of the complaint, Defendant denies the allegations contained therein to the extent the allegations pertain to Defendant. Except as denied, Defendant makes no answer thereto, said allegations pertaining to other defendants.

20. Answering paragraph 20 of the complaint, Defendant makes no answer thereto, said allegation pertaining to another defendant.

## III. CAUSES OF ACTION

21. Answering paragraph 21 of the complaint, Defendant denies each and every allegation contained therein that pertains to answering defendant Interstate. Except as so denied, Defendant makes no answer thereto, said allegations pertaining to another defendant.

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22. Answering paragraph 22 of the complaint, Defendant denies those allegations that pertain to answering defendant Interstate. Except as so denied, Defendant makes no answer thereto, said allegations pertaining to another defendant.

23. Answering paragraph 23 of the complaint, Defendant denies those allegations that pertain to answering defendant Interstate. Except as so denied, Defendant makes no answer thereto, said allegations pertaining to other defendants.

24. Answering paragraph 24 of the complaint, Defendant denies those allegations that pertain to answering defendant Interstate. Except as so denied, Defendant makes no answer thereto, said allegations pertaining to other defendants.

25. Answering paragraph 25 of the complaint, Defendant denies those allegations that pertain to answering defendant Interstate herein. Except as so denied, Defendant makes no answer thereto, said allegations pertaining to other defendants.

26. Answering paragraph 26 of the complaint, Defendant denies those allegations that pertain to answering defendant Interstate. Except as so denied, Defendant makes no answer thereto, said allegations pertaining to other defendants.

27. Answering paragraph 27 of the complaint, Defendant admits that there is a dispute between Abbott and answering defendant Interstate. Except as so admitted, Interstate denies all else that pertains to answering defendant Interstate. Except as so admitted and denied, Defendant makes no answer thereto, said allegations pertaining to other defendants.

28. Answering paragraph 28 of the complaint, Defendant makes no answer thereto, as no answer is required.

29. Answering paragraph 29 of the complaint, Defendant makes no answer thereto, as no answer is required.

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30. Defendant further denies any allegations and statements in the plaintiff's complaint that are not specifically admitted above, and denies that the plaintiff is entitled to any of the relief requested in the complaint.

#### IV. AFFIRMATIVE DEFENSES

1. Further answering the complaint and for its first affirmative defense thereto, Defendant alleges the complaint against it fails to state a claim upon which relief can be granted.

2. Further answering the complaint and for its second affirmative defense thereto, Defendant alleges that if the plaintiff was damaged as alleged in its complaint, said injuries were the direct and proximate result of the acts and/or omissions of others, including, but not limited to, Caldwell & Moreland Insurance Services, Inc., and as a result of said acts or omissions, Defendant is not liable to the plaintiff.

3. Further answering the complaint and for its third affirmative defense thereto, Defendant alleges the complaint against it is barred by the doctrines of *res judicata* and/or collateral estoppel.

4. Further answering the complaint and for its fourth affirmative defense thereto, Defendant alleges the complaint against it is barred by settlement and release.

5. Further answering the complaint and for its fifth affirmative defense thereto, Defendant alleges the plaintiff lacks standing to bring this suit as against Interstate.

6. Further answering the complaint and for its sixth affirmative defense thereto, Defendant alleges that Washington State is an improper venue for this action.

7. Further answering the complaint and for its seventh affirmative defense thereto, Defendant alleges that plaintiff J.R. Abbott is not the real party in interest.

1           8.       Further answering the complaint and for its eighth affirmative defense thereto,  
2 Defendant alleges that the laws of another jurisdiction may apply.

3           9.       Further answering the complaint and for its ninth affirmative defense thereto,  
4 Defendant alleges that a related action is pending in the Superior Court of California, County of  
5 Los Angeles, North Central District, Case No. EC053290.

6           10.      Further answering the complaint and for its tenth affirmative defense thereto,  
7 Defendant alleges that the settlement in the *Ellinger v. Bragg* case (the "Underlying Action")  
8 was the result of, in whole or in part, bad faith, collusion, and/or fraud.  
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10          11.      Further answering the complaint and for its eleventh affirmative defense thereto,  
11 Defendant alleges that the settlement agreement in the Underlying Action is not reasonable and  
12 fails to adequately account for the facts set out in *Glover v. Tacoma General Hospital*.

13          12.      Further answering the complaint and for its twelfth affirmative defense thereto,  
14 Defendant alleges the plaintiff has failed to meet all conditions precedent to its statutory claim  
15 and it is therefore barred.  
16

17          13.      Further answering the complaint and for its thirteenth affirmative defense thereto,  
18 Defendant alleges that if Defendant is found liable on any basis, Defendant is entitled to  
19 contribution, set off and/or subrogation.

20          14.      Defendant reserves its right to amend or assert additional defenses as discovery  
21 in this case progresses.  
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1 WHEREFORE, having fully answered the complaint, defendant Interstate Fire &  
2 Casualty Company, prays that the same be dismissed with prejudice and that it recover such  
3 other and further relief as to the Court seems just and equitable.

4 DATED this 1<sup>st</sup> day of October, 2012.

5  
6 s/ Emilia L. Sweeney  
7 Emilia L. Sweeney, WSBA No. 23371  
8 Attorneys for Defendant Interstate Fire and  
9 Casualty Company  
10 CARNEY BADLEY SPELLMAN, P.S.  
11 701 Fifth Avenue, Suite 3600  
12 Seattle, WA 98104  
13 Phone: (206) 622-8020  
14 Facsimile: (206) 467-8215  
15 [sweeney@carneylaw.com](mailto:sweeney@carneylaw.com)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on 15<sup>th</sup> day of October, 2012, I electronically filed the foregoing Defendant Interstate Fire & Casualty Company's Answer to Plaintiff's Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Richard H. Skalbania  
ASHBAUGH BEAL  
701 Fifth Avenue, Suite 4400  
Seattle, Washington 98104  
(206) 386-5900  
[rskalbania@lawasresults.com](mailto:rskalbania@lawasresults.com)  
*Attorneys for Plaintiff*

Thomas Lether  
Eric Jay Neal  
LEATHER & ASSOCIATES, PLLC  
3316 Fuhrman Avenue E, Suite 250  
Seattle, Washington 98102-3800  
(206) 467-5444  
[tlether@letherlaw.com](mailto:tlether@letherlaw.com)  
[eneal@letherlaw.com](mailto:eneal@letherlaw.com)  
*Attorneys for Defendant Travelers Indemnity Co.*

Jacquelyn A. Beatty  
KARR TUTTLE CAMPBELL  
1201 Third Avenue, Suite 2900  
Seattle, Washington 98101-3284  
(206) 223-1313  
[jbeatty@karrtuttle.com](mailto:jbeatty@karrtuttle.com)  
*Attorneys for Defendants American  
Guarantee & Liability Insurance Co. and  
Zurich American Insurance Co.*



Marie Jensen  
Legal Assistant to Emilia L. Sweeney

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